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# Supreme Court of the United States

OCTOBER TERM, 1944

No. 1183

ANNIE NORTON, TRUSTEE,
*Petitioner and Appellant below,*

*v.*

TOM GREEN COUNTY,
*Respondent and Appellee below.*

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AND BRIEF IN SUPPORT THEREOF.

SCOTT SNODGRASS,
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## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

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*To the Honorable Harlan Fiske Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Your Petitioner respectfully shows:

## SUMMARY STATEMENT OF THE MATTER INVOLVED

This is a declaratory judgment suit by Petitioner against Respondent for a judgment declaring invalid a call of certain bonds prior to maturity. Petitioner has been denied relief by the court of last resort of the State of Texas.

While the amount of loss which Petitioner will suffer as a result of the particular bonds which are included in this action is not great, the decision of the Texas court will cause losses amounting to many million dollars to holders of Texas County bonds residing throughout the United States.

The facts are not in dispute, and briefly stated they are as follows:

In 1927, Respondent, Tom Green County, issued $297,000.00 of courthouse bonds, maturing serially each year to 1967. (R. 40.) Neither the bonds nor the proceedings authorizing their issuance provided that the bonds would be redeemable prior to maturity.

The bonds were sold for par and a premium of $12,178.00, and would not have brought a premium if any such option of prior redemption had been provided. (R. 31, Pars. 4 and 7.)

In 1938 and 1939, Petitioner purchased $5,000.00 of these bonds from a Dallas bank at par plus a premium of $1,147.37. (R. 31, Par. 8.)

On December 15, 1942, Respondent made a contract with B. V. Christie & Co., a bond dealer, whereby Christie agreed to assist the Respondent in "making the bonds available for refunding" into bonds bearing a lower rate of interest. (R. 84; 32; Par. 10.)

On July 12, 1943, the Governing Body of Respondent County passed an order calling the bonds at par on October 10, 1943, and declaring that interest would not be paid

on the bonds after October 10, 1943. (R. 32, Par. 11.) The value of Petitioner's bonds on that date was par plus $1,020.00. (R. 32, Par. 13.)

The Respondent did not put money of its own at the place of payment, because it did not have the money. (R. 32, Par. 12.) Nor did Respondent borrow money for the purpose. So the bonds were not in fact to be paid. They were to be purchased by Christie, with Christie's money, (R. 32, Par. 12) and he would make them "available" for exchange for refunding, as his contract says, and under the conditions therein prescribed. (R. 32, Par. 12.) The Attorney General of Texas, in an opinion to Respondent County concerning this very contract, held that the bonds thus purchased by Christie would become Christie's bonds. The Attorney General's opinion will appear herein as an appendix to the brief.

## JURISDICTIONAL STATEMENT

It is contended that the Supreme Court has jurisdiction to review the judgment here in question because Petitioner has a title and right specially set up and claimed by her under Article XIV, and Article I, Section 10 of the Federal Constitution, as shown by the questions presented below.

The District Court of Tom Green County, in which this suit was instituted, denied Petitioner the relief sought by her, saying "That this court is without any authority to grant plaintiff any relief, although she will be greatly damaged by the action of the Defendant County in calling said bonds".

The Court of Civil Appeals affirmed the District Court, and made the same comment. (Opinion, R. 110.)

Petitioners thereafter filed with the Supreme Court of Texas a Petition for Writ of Error to review the decision of the Court of Civil Appeals, and such petition was refused. Petitioner then filed with the Supreme Court of Texas, a Motion for Rehearing of said Petition for Writ of Error. This motion was overruled on January 10, 1945. (R. 134.)

## QUESTIONS PRESENTED

The questions herein presented are:

1. Was the action of the governing body of Respondent County in purporting to call the bonds for redemption, and stopping interest thereon, actually a call for redemption, or was it a means to coerce Petitioner and other bondholders to sell their bonds to B. V. Christie & Co., thus depriving Petitioner of her property without due process of law in violation of Art. XIV of the Federal Constitution?

2. Was the action of the governing body of Respondent County in passing an order purporting to call the bonds and stopping interest thereon, a legislative act in violation of the Contract Clause of the Federal Constitution? Art. I, Section 10.

These questions were presented in the points assigned in the original brief in the Court of Civil Appeals (R. 105, Points 4 and 6); the motion for rehearing in that court (R. 112, Assignments IV and VI); the Petition to the Supreme Court of Texas for Writ of Error (R. 115,

Points 4 and 6); and in the Motion for Rehearing in the Supreme Court (R. 127, Points 1 and 5).

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The Texas court has decided the above Federal questions of substance which have not heretofore been decided by the Supreme Court, and in a way not in harmony with prior decisions of this court.

2. Under the holding of the court below, citizens throughout the United States, who hold millions of dollars of Texas County bonds, will be deprived of the premium cost and value of their bonds (often in excess of 25% of the principal of the bonds) for the profit of those bond speculators who have no obligation to regard the rights of bondholders.

## PRAYER

Wherefore, your Petitioner prays that a Writ of Certiorari issue under the seal of this court, directed to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, sitting at Austin, Texas, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said Court of Civil Appeals had in the case numbered and entitled on its docket, No. 9453, *Annie Norton, Trustee, Appellant, v. Tom Green County, Appellee*, to the end that this cause may be reviewed and determined by this court as provided by the Statutes of the United States; and that the judgment herein of said Court of Civil Appeals be reversed by

this court, and for such further relief as to this court may seem proper.

Dated: April 16, 1945.

Respectfully submitted,

SCOTT SNODGRASS,
W. P. DUMAS,
JOHN D. MCCALL,
CLARENCE E. CROWE,
MILLARD PARKHURST,

By John D. McCall
*Counsel for Petitioner.*

(The time for filing this Petition was extended to April 30, 1945, by an Order entered April 4, 1945, by Mr. Justice Black.)